

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

David A. Moe,

Petitioner,

-vs-

Chad Pringle, Warden,

Respondent.

Case No. 3:15-cv-98

**ORDER ADOPTING REPORT AND
RECOMMENDATIONS**

On May 10, 2016, the undersigned received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that respondent's motion to dismiss be granted and David Moe's petition for habeas relief be dismissed.¹ Moe timely filed objections to the Report and Recommendation.² In his objection, Moe reiterates his previous arguments, including that the law enforcement officers should have been aware of the unconstitutional nature of a search using a drug-sniffing dog absent case law and that alleged discovery violations led to him pleading guilty and prevented him from presenting his claims earlier.

None of Moe's objections change the fact that his petition under 28 U.S.C. § 2244(d)(1) is time-barred. First, it was filed approximately nine years after the limitations period, based on the date the state court convictions became final, had expired. Second, Moe's reliance on Florida v. Jardines³ to extend the limitations period is misplaced because Jardines has not been determined retroactively applicable to convictions that were final

¹ Doc. #15.

² Doc. #16.

³ 133 S.Ct. 1409 (2013).

when the Supreme Court issued its decision. Lastly, Moe has not presented a sufficient reason to toll the limitations period under equitable principles. He has neither presented an extraordinary circumstance nor any circumstance that made it impossible to timely file a petition.

For the foregoing reasons, Moe's objections are overruled. The court **ADOPTS** the Report and Recommendation in its entirety. For the reasons set forth therein, the respondent's motion to dismiss⁴ is **GRANTED**. Moe's petition⁵ is **DISMISSED** with prejudice.

Because dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings, the court will not issue a certificate of appealability. The court further finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 17th day of June, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

⁴ Doc. #7.

⁵ Doc. #1.